

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.346 OF 1993

State Bank of India. ..Petitioner.

V/s.

L.M.Devare, Liquidator of the
Bank of Karad & Ors. ..Respondents.

WITH

OFFICIAL LIQUIDATOR'S REPORT NO.146/1999 DT.7/7/1999
IN
COMPANY PETITION NO. 229 OF 1992

Reserve Bank of India. ..Petitioners.

V/s.

Bank of Karad Ltd. ..Respondents.

Ms. Nandinee Mayekar i/b. Little & Ci. for
Petitioner.

Mr.S.J.Bhandary i/b. Bhandary & Bhandary for
respondent No.1/O.L.

Mr.Vishal Kanade i/b. Prem Ranga for respndent
No.2-RBI.

Mr.Vinay Bhate for respondent No.3.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 16, 2008.

P.C. :

1. Heard Counsel for the parties.

2. This Petition is filed under section 45B of
the Banking Regulation Act, 1949 for diverse reliefs.

The principal relief claimed is for direction against the 2nd Respondent to forthwith transfer the security 10.20% Central Loan 1993 bearing No.BY/167 of the face value of Rs.1 Crore in favour of the Petitioners and to pay interest accrued thereon to the Petitioners.

3. The Petitioners state that the said security stood in the name of the Respondent No.1 Bank of Karad, which was a banking company. The Petitioners caused to purchase the said security, which transaction was materialised through the Respondent No.3 the broker. The Petitioners made over the sum of Rs.1.07 Crores for procurement of the above said securities. The fact that the said amount was paid to the Respondent No.1 is not in dispute. That payment was made prior to 27th May, 1992. As per the extant regulations, the Petitioners applied to the Reserve Bank of India for completing formalities of transfer of securities in the name of Petitioners. In so far as the first respondent Bank of Karad is concerned, it had no objection for completing the transaction, as claimed by the Petitioners. However, while the said application before the Reserve Bank of India was pending, in the mean while, the Respondent No.1 Bank of Karad was ordered to be wound up in

terms of Order dated 20th July, 1994 passed by this Court. As a result, the Reserve Bank of India declined to accede to the transfer request of the Petitioners. The Petitioners were instead, relegated before the Official Liquidator, who in turn, called upon the Petitioners to seek permission of this Court for according no objection to transfer the securities which continued to stand in the name of the Bank of Karad, even after the date of winding up order is passed. It is in this backdrop, the Petitioners have been driven to file present Petition under the Banking Regulation Act.

4. As aforesaid, neither the Respondent No.1 can resist the transfer of securities in favour of the Petitioners, as the entire amount has already been paid and received by the Bank of Karad much before 27th May, 1992. The transaction by no stretch of imagination can be said to be tainted one. It is a bonafide transaction. Having regard to the fact that the Petitioner acted upon the notification of the Respondent No.2 Reserve Bank of India to procure such security, even the Reserve Bank of India has no objection for transfer of security in favour of the Petitioners.

5. Taking over all view of the matter, therefore, I have no hesitation in acceding to the request of the Petitioners in terms of prayer clause (a) of the Petition.

6. The next question is about maturity amount, which has been deposited by the Respondent No.2 in this Court in terms of the Order dated 20th August, 1993. The said amount has been invested in Fixed Deposit Scheme. As the amount was payable to the Petitioners on the date of its maturity, as the Petitioners had purchased the said securities for consideration from Bank of Karad, the Petitioners would be entitled to avail of the maturity amount as on 14th July, 1993. Besides, the maturity amount, the Petitioners would now be entitled even for the interest accrued on the amount, which was deposited in this Court and has been invested from time to time in terms of the Order of the Court. For, that amount belongs to Petitioners exclusively. In the circumstances, the Petitioners are also entitled for the relief in terms of prayer clause (b)(i).

7. Accordingly, this Petition is made absolute in terms of prayer clauses (a) and (b)(i), which read thus:

"(a) That this Hon'ble Court be pleased to direct the 2nd Respondent to forthwith transfer the security, 10.20% Central Loan 1993 bearing No.BY/167 of the face value of Rs.1 Crore in favour of the Petitioners and to pay over the accrued interest thereon to the Petitioners;

(b)(i) That this Hon'ble Court will be pleased to direct the 1st Respondent and the Prothonotary and Senior Master to hand over to the Petitioners, the amount deposited by the 2nd Respondent with the Prothonotary and Senior Master and which is invested by him together with all accretions thereto by way of interest, towards the Petitions' dues, in terms of prayer (b) hereinabove."

8. In so far as Official Liquidator's Report No.146 of 1999 dated 7th July, 1999 is concerned, it is seen that the Bank of Karad is entitled for payment from State Bank of India in the sum of Rs.1,40,95,763.63/-. Paragraph-14 of the Report reads thus:

"14. In view of the foregoing, the Liquidator prays for the following directions of this Hon. Court:

(i) That the State Bank of India be directed to return to the Liquidator forthwith, Securities of Face Value of Rs.50 Lacs(7.5% I.C.I.C.I. Bonds 2001 Face Value of Rs.45 Lacs and 6.75% I.C.I.C.I Bonds 2000 if Face Value of Rs.5 Lacs) and; additionally

(ii) The State Bank of India be directed to pay to Rs.1,40,95,763.63 consisting of:

a) Proceeds of matured securities: Rs. 5,00,000.00

(As per attached Annexure 'E')

b) Balances in Current
Accounts Rs.23,09,569.63
(as per attached Annexure 'E')

c) Int.payable on various
items Rs.92,86,194.00

iii) For such other and further Orders and
directions as this Hon. Court may deem fit
and proper in the facts of this case."

9. The said report has been opposed by the State Bank of India by filing affidavit of Mr.S.S.Arya, Assistant General Manager in Mumbai Main Branch of State Bank of India. The liability of the State Bank of India to pay the said amount is not disputed. The case made out in the reply affidavit is that the State Bank of India is claiming lien over the said amount which was kept by the Bank of Karad as securities, as the issue regarding the transfer of securities produced by the State Bank of India was still unresolved. However, as the said issue has been addressed in the earlier part of this Order, the Official Liquidator for and on behalf of the Bank of Karad is entitled to receive amount referred to in paragraph-14 of the Report alongwith the interest accrued thereon, if any.

10. Accordingly, relief in terms of prayer clause 14 of the Official Liquidator's Report dated 7th

July, 1999 is granted. Report disposed off accordingly.

11. At this stage, Counsel for the State Bank of India prays for stay of operation of the entire order for a period of four weeks to enable State Bank of India to examine whether the later part of the Order deserves to be challenged in appeal. At the request of the State Bank of India, it is ordered that no effect to the order passed today in both proceedings shall be given for a period of four weeks from today.

12. The Company Petition and the Official Liquidator's Report under consideration are disposed off on the above terms.

(A.M.KHANWILKAR,J)